BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 5015 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

BEVERLY J. HIGHBERGER
(Claimant)
S.S.A. No.

PACIFIC TELEPHONE &
TELEGRAPH COMPANY
(Employer-Appellant)

PRECEDENT
BENEFIT DECISION
No. P-B-220

FORMERLY
BENEFIT DECISION
No. 5015

The above-named employer on February 2, 1948, appealed from the decision of a Referee (LA-10885) which held that the claimant was subject to disqualification from benefits under Section 58(a)(4) of the Unemployment Insurance Act (now section 1257(b) of the Unemployment Insurance Code), for five weeks beginning September 30, 1947, and November 12, 1947, respectively.

Based on the record before us, our statement of fact, reason for decision and decision are as follows:

STATEMENT OF FACT

The claimant who is twenty years of age was last employed for nine months as a telephone operator in Beverly Hills, California, by the appellant-employer, and when she voluntarily terminated on June 1, 1947, was receiving $39 a week and working a split shift between the hours of 9:00 a.m. and 9:00 p.m., during the course of which she was off duty for four hours. Claimant who has completed two years of college had worked for the employer as a part-time telephone operator from December, 1943, to December, 1944, working a shift from 5:00 p.m. to 9:00 p.m. She also had

experience as a stock clerk and file clerk gained during three months of a school vacation in 1943. In addition the claimant is able to type at the rate of 50 words a minute.

On September 23, 1947, the claimant was registered for work as a telephone operator and filed a claim for benefits in the Hollywood office of the Department of Employment. The employer protested payment of benefits and on December 16, 1947, a determination was issued by the Department of Employment in Culver City, to which the claim was transferred on November 7, 1947, holding the claimant eligible for benefits. From this determination the employer appealed to a referee. The referee modified the determination holding the claimant subject to disqualification from benefits beginning September 30, 1947, for a five-week period and from November 12, 1947, for a five-week period on the grounds that the claimant had refused offers of suitable work on those dates without good cause. The referee further held that the claimant was available for work. It is from this latter holding that the appellant-employer has appealed to this Appeals Board.

Claimant left her employment with the appellant-employer on June 1, 1947, shortly after her marriage because her husband was unable to drive her to and from work while she was employed on a split shift. Prior to her marriage the claimant's father had transported her to and from work.

On September 30, 1947, the appellant-employer sent to the claimant a written offer of employment as a telephone operator at a wage of $39 per week for a forty-hour week at its Beverly Hills branch. The offer did not specify the hours of work since such hours would have to be determined by the needs of the branch office and the priority of other employees whose seniority entitled them to the more desirable working hours. When the offer was made it was likely that the claimant would be placed on a split shift and late hours. The claimant refused this offer of employment because she wanted daytime hours. On October 24, 1947, the Department disqualified the claimant for five weeks for refusing this offer of work and no appeal was taken therefrom.

On November 12, 1947, the employer repeated its offer to employ the claimant in its Beverely Hills branch.

On December 16, 1947, the Department determined as to this offer that the claimant had good cause for refusing it.

On November 28, 1947, the employer offered similar employment to the claimant at a downtown Los Angeles branch office. On December 16, 1947, the Department determined that the claimant had good cause for refusing this offer. Another offer of the same kind of work in the Santa Monica office was made by the employer to the claimant on December 9, 1947. The same conditions of re-employment existed with reference to these offers as were present in the offers of September 30, 1947, and November 12, 1947. The claimant refused the offer of November 28, 1947, because she would have to work a split shift; and because of the distance to the work, she would be away from her home from early morning until late in the evening. The claimant would have been off work a period of four hours during the shift. The claimant made no reply to the offer of December 9, 1947. As to the offer of December 9, 1947, the Department determined that the claimant had refused an offer of suitable work without good cause. The claimant did not appeal to a Referee from this disqualification.

Public transportation available to the claimant from her residence to the Beverly Hills office of the employer, required a travel time one way of not in excess of thirty minutes, exclusive of the time necessary to walk from her home to the place where she boarded the public conveyance and from the place where she left the conveyance to the office. Claimant lived four blocks from the point where she would board the conveyance and the cost one way was twenty-five cents. A transfer from one bus to another was required along the route and would bring the claimant within two blocks of the office. The actual travel time one way from the vicinity of the claimant's residence to Santa Monica was twenty minutes. A period of approximately an hour would be required for the claimant to go from her residence to the employer's downtown Los Angeles office. A walk of several blocks from her residence was necessary to get the transportation.

Except for her unwillingness to accept split shift work involving night hours with her former employer, the claimant imposed no unreasonable restrictions upon acceptable employment. She made reasonable efforts to

secure work in her own behalf and opportunities existed in a labor market for work within the claimant's qualifications.

The employer contends that the claimant should be held not available for work because of her refusal without good cause to accept suitable work when offered to her.

REASON FOR DECISION

The first issue to be considered herein is whether the claimant had good cause for refusing the offers of work made to the claimant by the appellant-employer.

Since the claimant did not appeal the Department's determinations disqualifying her for refusing the offers of work made on September 30 and December 9, 1947, they have become final and are not before us in this appeal. The Referee was therefore without jurisdiction to pass upon the determination of October 24, 1947, made with respect to the offer of September 30, 1947. There is before us in the instant appeal only the Department's determination of December 16, 1947, made with respect to the claimant's refusals of the employer's offers of work on November 12 and November 28, 1947.

This Appeals Board has held that an individual's objection to split shift hours involving night work constitutes a personal preference and not a compelling reason such as would constitute good cause for refusal of suitable employment (see Benefit Decision 2816-5622). In reaching the conclusion that the hours of work offered the claimant were not unusual or unreasonable we considered the custom of the telephone industry to operate on a twenty-four hour basis (see Benefit Decision No. 2074-4431).

The offer made to the claimant on November 12, 1947, to work as a telephone operator in her home community, involving a travel time of thirty minutes or less was an offer of suitable work which the claimant had no good cause for refusing. We hold, therefore, that she is subject to disqualification for benefits provided in Section 58(a)(4) of the Unemployment Insurance Act (now section 1257(b) of the code).

However, the offer of November 28, 1947, involved a travel time from the claimant's residence to work of one hour. Considering the fact that such work would be on a split shift and a likelihood of two round trips to and from work daily, it is our opinion that the offered work was not suitable. We hold that the claimant had good cause for refusing this offer and is not subject to disqualification therefor.

In this proceeding the employer raises the issue that claimant should be held not available for work because of her refusal without good cause to accept suitable work when offered to her.

In order to be eligible for unemployment insurance, a claimant must among other conditions be available for work. Section 57(c) of the Act (now section 1253(c) of the code) imposing this condition of eligibility has been construed by this Appeals Board in numerous decisions to require a claimant to be in a labor market where there is a reasonable demand for his or her services, and without unreasonable restrictions or limitations on acceptable work, either self-imposed or created by force of circumstances, so that it may be found that the claimant is genuinely in that labor market ready, willing and able to accept suitable employment. It should be noted that the Act also provides in Section 58(a)(4) (now section 1257(b) of the code) that a claimant who refuses to accept an offer of suitable work without good cause shall be disqualified for benefits for the term specified in Section 58(b) (now section 1260 of the code). In other words the mere refusal of a work offer without good cause does not of itself operate to render a claimant unavailable for work.

The employer contends in effect that the decision of this Appeals Board in the matter of Clione Maxon, Benefit Decision 4587-6193, is conclusive on the issues herein and that the claimant's refusals of offers of work without good cause have rendered her unavailable for work and ineligible for benefits.

In numerous cases, this Board has held, in effect, that a claimant's employability must be reasonably free from restrictions so that there remain substantial probabilities that the claimant will again be gainfully employed. In other cases, we have held that where

a claimant imposes limitations excluding a substantial field of employment opportunites and is not motivated in so doing by compelling reasons, the claimant thereby renders himself not available for work. However, restrictions which have left substantial employment opportunities open to the claimant have not been held to render a claimant ineligible for benefits. Thus in Benefit Decision 2695-5422, we held that:

> "Although the claimant restricted himself to work during daytime hours, the limitation in itself is not sufficiently restrictive to render a claimant unavailable when, in fact, as shown by the record herein, there is daytime work available during the period for which benefits are claimed."

Similarly restrictions imposed by a claimant for compelling reasons have been held to be consistent with a status of availability upon a showing that there remained a labor market in which there were reasonable prospects that the claimant could obtain suitable work. (See Benefit Decision 4601-8380)

A careful reading of the Maxon case, supra, does not indicate a departure by this Appeals Board from the principles which have long been established in the administration of the Unemployment Insurance Act. In that case, the claimant voluntarily terminated employment in an occupation which she had pursued for fifteen consecutive years. The crux of that case lies in the following language of this Appeals Board:

> "The claimant herein did not merely refuse a designated offer of employment; she made herself unavailable for a substantial field of suitable work; in fact, as far as the record discloses, for the only suitable work in which the claimant had any reasonable prospects of becoming employed."
> (Underscoring added)

It is not believed that the Maxon case is authority for the proposition that an individual who holds a reasonably competitive position in a labor market for services of the kind which he is qualified to perform is committed

to continue in the employ of a particular employer, regardless of the number of workers on its payroll, on pain of losing his rights under the Unemployment Insurance Act.

Reviewing the evidence adduced in the instant proceedings, consideration must be given to the fact that the claimant is twenty years of age, has worked for the employer full time for only a period of nine months, has had two years of college education and has qualifications which render her adaptable to the demands of the labor market in other occupations. Further note is taken of the fact that claimant has not imposed any restrictions upon her employability other than that to be inferred from her nonacceptance of the employer's repeated work offers. Despite such a restriction, the probabilities that she could find employment of an acceptable character seem good. She has been enhancing such prospects by making reasonable efforts on her own behalf to find such work. Weighing all the evidence in the instant proceeding, it is apparent that there is a wide field of potential employment open to the claimant and acceptable to her and that the claimant is genuinely in this labor market, ready, willing and able to accept suitable work if she succeeds in finding it. It is, therefore, our opinion that the claimant meets the eligibility requirements of Section 57(c) of the Act (now section 1253(c) of the code).

DECISION

The decision of the Referee is modified. The claimant is disqualified for benefits for five weeks subsequent to the week in which November 12, 1947, falls in which she first registers for work in accordance with the provisions of Section 58(b) of the Act (now section 1260 of the code). Benefits are denied for this period.

Sacramento, California, February 5, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

RICHARD H. MARRIOTT

DISSENTING - Written Opinion Attached

HARRY K. GRAFE

DISSENTING OPINION

I dissent.

I cannot agree with the conclusion, based on the facts of this case, that there were labor market alternatives open to the claimant when she repeatedly refused the employer's offers to return to work. Although we are once again hampered by the lack of a transcript and evidentiary exhibits (these have been irretrievably destroyed; see my dissenting opinion in Appeals Board Decision No. P-B-168), the facts as stated show a minimal employment history and no special qualifications.

The claimant was 20 years old, had attended college for two years and had last worked as a telephone operator for nine months. She had also worked as a telephone operator some three years earlier. She was registered with the Department for work as a telephone operator. During school vacation some four years earlier the claimant had worked as a stock clerk and file clerk for three months. The claimant is able to type 50 words per minute, but it does not appear from the facts that she ever held a job as a typist.

I submit that a total of three months' work during school vacation some four years in the past is not considered sufficient to qualify a claimant as qualified for a contemporary labor market as a stock clerk and file clerk. Notwithstanding the claimant's capacity to type 50 words per minute, she had never been in the labor market as a typist. Finally, the claimant had registered for work only as a telephone operator. Based on these facts, I can only conclude that the claimant was not available for work, having refused job offers as a telephone operator, and having insufficient qualifications to be considered "genuinely" in the labor market for office work. From the facts, such conclusion appears to be the true precedential meaning of this case.

HARRY K. GRAFE